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# NASA Procedural Requirements

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## **Subject: Reimbursable Agreements**

**Responsible Office: Office of the Chief Financial Officer**

| [TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [Chapter5](#) |  
[AppendixA](#) | [AppendixB](#) | [AppendixC](#) | [ALL](#) |

## **Chapter 4. Pricing Reimbursable Agreements**

### **4.1 Pricing Reimbursable Space Act Agreements**

#### 4.1.1 Space Act Reimbursable Agreement Pricing Policy.

4.1.1.1 Market Rate Pricing. In order to avoid putting commercial providers of similar services at a competitive disadvantage, NASA may adjust its cost recovery to account for market prices. The NASA pricing policy for Space Act Reimbursable Agreements when the types of services to be provided are available from non-NASA sources is to charge market rates. When market rates apply to a reimbursable agreement, those rates must be based on a market survey. Notwithstanding a market based price, the price should recover at least the incremental costs of doing the work. However, market based pricing does not apply where the pricing requirements for specific services or facilities are otherwise established by law or regulation or where the services to be performed by NASA can be demonstrated to be unique such that market rates from non-NASA providers can not be determined. The section "Special Pricing Provisions Applicable to Specific Agreements" contains the special pricing provisions applicable to certain types of NASA services and facilities.

4.1.1.2 Cost Based Pricing. In the event there is no market source for the specific or similar services that the Center proposes to provide under a reimbursable agreement, the Center Chief Financial Officer (CFO) is not required to perform a market survey. The Center CFO shall establish a price, based on the best information available, that is consistent with the cost NASA will incur and to consider the benefit NASA will receive when the work is performed. Unless some costs are waived and funded by either a direct funded NASA program or the Center Management and Operation (CM&O pool), the price charged the customer should equal the full cost as determined in accordance with

Chapter 3 of this NPR and identified on the Estimated Price Report (EPR). The process used and the factors considered in the development of such prices must be consistently applied and fully documented. This documentation must be maintained for at least three years.

4.1.1.3 Limits on Competition with U.S. Commercial Sources. Legal or policy considerations can affect the circumstances in which the Agency can make specific types of facilities or services available if commercial services are otherwise available. For example, the Commercial Space Competitiveness Act (15 U.S.C. § 5807) states the Federal Government, including NASA, may allow non-Federal entities to use space-related facilities on a reimbursable basis if equivalent commercial services are not available on reasonable terms. For these facilities and services, the customer requesting that NASA undertake reimbursable activities bears the burden of establishing that they cannot obtain equivalent goods or services from the private sector. Centers with questions concerning the offering of specific services that are also available from a U.S. commercial source should contact their Center Chief Counsel.

#### 4.1.2 Procedures for Establishing "Market Rates".

4.1.2.1 Market Survey. Center CFOs will ensure that a comparable pricing survey is conducted of providers of similar services that the Center wishes to offer through reimbursable Space Act agreements. These surveys are performed annually or as reasonable and necessary, depending upon the degree of external market price stability for the services being offered. If the Center performs its market price surveys on a basis that is less frequent than annually, the Center CFO must document the rationale for the Center's market survey schedule. Since the responsible technical managers have established working relationships with other providers, it is expected that these managers will conduct the surveys and provide the results to the Center CFOs. Such a survey will include a representative sample of providers, and be conducted in a thorough manner, so that an analysis of the results will provide reasonable assurance that a comparable pricing structure can be determined for the current year for that Center. The process, analyses, and results of market surveys will be documented and available for review.

4.1.2.1.1 A representative sample of service providers will be surveyed through interviews, reviewing their published rates, or by appropriate alternative methods (e.g., knowledgeable industry representatives or associations). The information obtained during the surveys will be documented, labeled proprietary information, and access will be restricted. The documentation will include:

- a. Name of the service provider;
- b. Date the information was received; and
- c. Pricing information obtained.

4.1.2.1.2 The Center CFO will ensure that the results of the survey are consolidated, evaluated, and analyzed, with the objective of reaching a pricing structure for the Center that is:

- a. Supported by the survey results;
- b. Comparable to prices that customers could expect to find at other providers, given any discount or premium that is needed to compensate for bona-fide differences; and

c. Rational, fair, and consistently applied.

4.1.2.1.3 The Center CFO will ensure that the survey results, evaluation, analysis, and judgments are appropriately documented and retained for review in accordance with NASA document retention policies.

4.1.2.2 Interim Pricing Adjustments Between Market Surveys. During the year between the market surveys, new pricing-related information may be discovered that the Center CFO should review, analyze, and evaluate for justifying possible interim adjustments to the Center's pricing structure. These adjustments should be kept to an absolute minimum in order to maintain pricing consistency and fairness to customers. In addition, pricing changes should not be influenced by "negotiations" with individual customers. The pricing strategy is market-based, not negotiated customer by customer. Nevertheless, in those rare cases when an interim adjustment to the Center pricing structure is necessary, it should be well documented and the supporting evidence maintained for three years.

4.1.3 Market Adjustments on Estimated Price Reports (EPR). The adjustments needed to reconcile the market price to the full cost will be identified in a separate column of the EPR. The total adjustment for the agreement should be distributed to the individual lines on the EPR based on the information available at the Center.

4.1.4 Treatment of Differences between Cost and Price.

4.1.4.1 Incremental Costs Not Covered by the Price. If the market based price is below the incremental cost that the Center will incur to perform the work, the CFO must obtain alternative direct program funding and/or CM&O funding. If incremental project costs are funded by NASA direct funds, the project shall be confirmed as consistent with the period of availability, intended purpose, and amount restrictions of the direct program funding in accordance with 31 U.S.C. §1301(a), 31 U.S.C. §1502(a), 31 U.S.C. §1341(a), and 31 U.S.C. §1517(a). If there are actual unreimbursed incremental costs that are not reflected on the EPR or if the alternative source of funding is different from that shown on the EPR, an approval should be obtained from the Center CFO (similar to the approval obtained for waived incremental costs on the EPR).

4.1.4.2 Sequence of Cost Waivers. If the market price is below the full cost of the project, pricing to recover indirect costs (i.e., CM&O) shall be waived until market price is reached. Incremental costs shall not be waived before all indirect costs are waived.

4.1.4.3 Market Based Price Exceeds Full Cost. If the market based price is above full cost, Centers must deposit the amount collected that exceeds full cost into the Miscellaneous Receipts Account at Treasury.

4.1.4.4 Full Cost Reporting to Federal Agency Customers. If the reimbursable agreement requires reporting of NASA's full costs to a Federal agency customer in compliance with Statement of Federal Financial Accounting Standards (SFFAS) No. 30: Inter-Entity Cost Implementation: Amending SFFAS 4, Managerial Cost Accounting Standards and Concepts, any unreimbursed cost shall be accounted for and reported as required in the agreement. That would apply in limited circumstances as described in Chapter 2 of this NPR.

4.1.5 Special Pricing Provisions Applicable to Specific Agreements. Reimbursable work for certain types of services or facilities are governed by statutes and regulations other than the Space Act and NASA must follow the pricing and/or non-competition

requirements of those authorities rather than NASA's general Space Act authority. Market based pricing only applies to the extent it is consistent with these other requirements. For example:

#### 4.1.5.1 Wind Tunnel Fees.

4.1.5.1.1 The reimbursement required for Space Act agreements using wind tunnels operated by NASA will be based on the applicable pricing method in accordance with section describing Procedures for Establishing "Market Rates." This includes:

a. Projects. National Aeronautical Facilities Projects. The national aeronautical facilities include the National Transonic Facility (NTF) at Langley Research Center and the National Full-Scale Aerodynamic Complex, consisting of the 40 by 80 foot and the 80 by 120 foot wind tunnels and related support facilities at Ames Research Center. NASA operates these facilities for NASA, industry, the Department of Defense, and other Government agency projects.

b. All Other Wind Tunnels. All other NASA wind tunnels will be used primarily for NASA research. However, all of these wind tunnels may be used for industry work when it is in the public interest either in joint programs with NASA or on a fee basis.

#### 4.1.5.2 Space Shuttle Payloads (14 CFR § 1214).

4.1.5.2.1 Standard Services. NASA may charge uniform prices for shuttle payloads, and escalate them annually unless updated.

4.1.5.2.2 Pricing Optional Services. To the extent practical, optional services will be provided on a fixed-price or fixed-rate basis. If this is not practical, the price will be on a governmental cost basis; i.e., the actual cost or in certain cases the estimated actual costs. They shall be escalated annually unless updated.

4.1.5.3 Tracking and Data Relay Satellite System (TDRSS) (14 CFR § 1215). This regulation covers considerations to be used in pricing TDRSS charges such as:

a. Annual determination of User Charges and Service Rates (14 CFR § 1215.113 and 114).

b. Payment and billing including administrative charges (14 CFR § 1215.115).

c. Estimated Service Rates and Escalation for Commercial Space Launch Act (CSLA) customers and others (14 CFR § 1215.115 Appendix A).

d. Other multiplication factors for service rates (14 CFR § 1215.115).

4.1.5.4 Commercial Space Activity. This section covers the use of NASA facilities for Commercial Space Activities (see 15 U.S.C. § 5802 for the definition of such activities) using NASA facilities. Space Launch Activities (49 U.S.C. § 701) is the primary activity of concern, though this section could apply to any Commercial Space Activities.

4.1.5.4.1 In accordance with 15 U.S.C. § 5807, NASA may allow non-Federal entities to use NASA space related facilities on a reimbursable basis if the Associate Administrator of the Space Operations Mission Directorate (NPD 1000.3 paragraph 4.3.2.3 and 4.3.2.9) determines that all of the following conditions are met:

a. The facilities will be used to support commercial space activities.

b. Such use can be supported by existing or planned Federal resources.

- c. Such use is compatible with Federal activities.
- d. Equivalent commercial services are not available on reasonable terms.
- e. Such use is consistent with public safety, national security, and international treaty obligations.

4.1.5.4.2 Basis of Reimbursement 15 U.S.C. § 5807 (b) (1) states: "The reimbursement referred to in subsection (a) [of 15 U.S.C. § 5807] of this section may be an amount equal to the direct costs (including salaries of United States civilian and contractor personnel) incurred by the United States as a result of the use of such facilities by the private sector. For the purposes of this paragraph, the term "direct costs" means the actual costs that can be unambiguously associated with such use, and would not be borne by the United States Government in the absence of such use" (i.e., incremental cost). Pricing of agreements covered by 15 U.S.C. § 5807 shall observe the following:

- a. The cost of commercial space activity support is to be calculated based on direct (i.e., incremental) cost.
- b. Since NASA may charge only direct costs for these services, Center Management and Operations (CM&O) and Corporate general and administrative (G&A) along with any other indirect costs will not be included in the price charged the customer. However, these indirect costs must be identified on the EPR as both components of full cost and adjustments to arrive at the amount the customer is required reimburse NASA. The requirements of Chapter 4 of this NPR apply to all adjustments from full cost, including adjustments required to comply with the provisions of 15 U.S.C. § 5807.

4.1.5.4.3 The amount of any reimbursement received by the NASA for commercial Space Activities support under this subsection shall be credited to the appropriation from which the cost of providing such support was paid.

4.1.5.5 Host-Tenant Agreements. Host tenant agreements represent a separate category of reimbursable agreement that may or may not be executed as Space Act Agreements. The pricing methodology used must be based on the authority under which the agreement is executed. As with all reimbursable agreements the Center Chief Counsel must review the agreement before it is signed.

4.1.5.5.1 Space Act Agreements. When host tenant agreements are executed under the authority of the Space Act the price charged the customer will be set as follows:

- a. NASA Owned Facility. In those cases where the host-tenant agreement is established as a Space Act agreement the price will be calculated based on the applicable pricing method in Section 4.1.2 describing Procedures for Establishing "Market Rates" in this NPR.
- b. Customer Owned or Constructed Facility. When one or more Federal Agencies has ownership of buildings or facilities, or has constructed the facility and turned it over to NASA, on a NASA Center and those facilities represent a substantial portion of the facilities on the Center, the Center may enter into a Cooperative agreement with the tenant(s) under which all facilities operating costs and associated indirect costs are shared equitably. The Centers are not required to use the EPR format to develop the full cost of the agreement as long as the reimbursement Center receives is equal to the actual costs the Center incurs to support the tenant. As with all other reimbursable agreements, the Centers must maintain documentation that supports computation of the

reimbursement the tenant is required to provide.

4.1.5.5.2 Economy Act Agreement with a Federal Customer. When host tenant agreements are executed as Economy Act Orders the customer Agency will be charged the actual cost.

## **4.2 Non-Space Act Reimbursable Work for Other Federal Agencies**

4.2.1 The Economy Act. While the Space Act provides specific authority to NASA to engage in reimbursable and cooperative agreements with various parties including other Federal agencies, the Economy Act (31 U.S.C. § 1535) provides authority for all Federal Agencies to engage in interagency reimbursable activity within certain constraints. If the reimbursable agreement cites the Economy Act as authority to execute the reimbursable work, market based pricing does not apply. The reimbursable customer shall be billed based on the full cost of the reimbursable project. Neither incremental direct nor indirect costs shall be waived in the case of an Economy Act reimbursable agreement unless it can be demonstrated that a NASA program benefits directly from the work in accordance with 31 U.S.C. §1301(a) in which case the NASA program would share a portion of the costs.

4.2.2 Actual Cost. The Economy Act requires all work be priced and charged to the ordering agency on an "actual cost basis," (i.e., based on actual costs that have been incurred by the performing agency). The Economy Act prohibits an agency from deriving profit, augmenting its appropriations, or using another agency's funds for purposes other than which the funds were originally appropriated. Actual cost means the direct cost of providing the work, plus indirect costs significantly related to providing the work.

4.2.3 Per the Office of Budget and Management (OMB) Circular No. A-11, Preparation, Submission, and Execution of the Budget, transactions authorized by the Economy Act are limited by the statutory requirement that the amount obligated by the ordering appropriation is required to be deobligated to the extent that the agency or unit filling the order has not incurred obligations before the end of the period of availability of the ordering appropriation. Funds should no longer be available to incur new obligations by NASA after the appropriation from the ordering agency has expired. Consequently, NASA should resolve all billing and costing issues with Federal reimbursable customer as much as possible prior to the expiration of funds of the ordering agency.

4.2.4 Because the ordering agency is responsible for deobligating balances not yet obligated by NASA at the end of the period of availability of the ordering appropriation with Economy Act agreements, upward adjustments to costs determined after the period of availability of the ordering appropriation should be funded by NASA direct (i.e., non-reimbursable) funds rather than billed to the reimbursable customer agency unless the reimbursable customer agency agrees to provide additional funding.

## **4.3 Charges for Rental Quarters and Related Facilities**

4.3.1 This section provides additional policies, responsibilities and requirements NASA must follow when setting and administering rental rates for rental quarters and charges for related facilities.

4.3.2 Legislative and Regulatory Authority. The references below provide the authority and policy governing Agencies charges for rental quarters and related facilities.

#### 4.3.2.1 5 U.S.C. § 5911, Quarters and Facilities; Employees on the United States.

#### 4.3.2.2 OMB Circular No. A-45, Rental and Construction of Government Quarters, Revised, dated October 20, 1993.

#### 4.3.3 Explanations of Terms.

4.3.3.1 Rental quarters include all housing supplied under specific Government direction as an incidental service in support of Government programs. "Public Quarters" designated for occupancy by members of the uniformed services with loss of allowances, and sleeping facilities furnished on a temporary basis are excluded. Otherwise all quarters owned by or leased to the Government are included whether occupied by Government employees, contractors, contractors' employees, or any other person to whom housing is provided as incidental to the performance of a Government activity. Housekeeping and non-housekeeping units, including trailers but not tents, furnished, and unfurnished are included.

4.3.3.2 Related facilities include, but are not limited to utilities, services, furniture, and appliances.

#### 4.3.4 Roles and Responsibilities.

4.3.4.1 Installation Director. The Installation Director, who has custody over quarters, as well as, the authority to rent the quarters will:

- a. Monitor the use of rental quarters.
- b. Annually determine whether an adjustment to the basic rental rate is required based on changes in the Consumer Price Index (CPI). Determine specifically when periodic reviews are necessary so that qualified appraisers may be obtained as required.
- c. Annually advise the Associate Administrator for Institutions and Management of the need to adjust basic rental rates based on changes in the CPI. Advise the Associate Deputy Administrator for Institutions and Management of the need to conduct a periodic review and of the recommended time schedule for the timely completion of the review. Request that the services of appraisers be provided.
- d. Conduct the review using qualified appraisers.

4.3.4.2 Assistant Administrator for Infrastructure and Administration. The Assistant Administrator for Infrastructure and Administration, will:

- a. Keep the CFO and the Associate Deputy Administrator for Institutions and Management advised of all significant events concerning the use of and charges for NASA rental quarters.
- b. Designate person(s) to receive appeals and ensure that necessary administrative reviews and approvals are made in accordance with the provisions of OMB Circular No. A-45.
- c. Establish by amending the lease or rental agreement the general rates and charges authorized by the Associate Administrator for Institutions and Management on the effective date and ensure they are collected.
- d. Authorize specific adjustments to general rents.

4.3.4.3 Associate Administrator for Institutions and Management. The Associate

**Administrator for Institutions and Management will:**

- a. Provide qualified appraisers to Installation Directors to perform the necessary reviews. Where practicable, appraisers of the Federal Housing Administration, the Army Corps of Engineers, the Naval Facilities Engineering Command, or the General Services Administration will be used.
- b. Make the final evaluation of the annual adjustment required based on changes in the CPI and the periodic reviews. Approve the general rates and charges to be established.
- c. Review and decide on appeal actions and adjustments, as necessary.

**4.3.5 Determining Rental Rates.**

4.3.5.1 Rental rates for quarters and charges for related facilities will be based upon reasonable value in the circumstances under which they are provided, occupied, or made available. The amount of rental rates shall not be set so as to provide an inducement in the recruitment or retention of employees or as an inducement to encourage the occupancy of existing Government housing. The detailed procedures for determining rental rates are contained in OMB Circular No. A-45, Rental and Construction of Government Quarters.

| [TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) |  
[Chapter5](#) | [AppendixA](#) | [AppendixB](#) | [AppendixC](#) | [ALL](#) |

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